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Letter dated 5 March 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Côte d'Ivoire to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit herewith the comments of the Government of Côte d'Ivoire (see annex) on the report of the United Nations emergency mission on the human rights situation in Côte d'Ivoire, issued as document S/2003/90 of 24 January 2003.

I should be grateful if you would have the whole of this text issued as a document of the General Assembly under agenda item 109, and of the Security Council.

(*Signed*) Noël-Emmanuel **Ahipeaud Guebo**
Chargé d'affaires a.i.

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Annex to the letter dated 5 March 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Côte d'Ivoire to the United Nations addressed to the Secretary-General

Comments of the Government of Côte d'Ivoire on the report of the fact-finding mission of the Office of the High Commissioner for Human Rights on the human rights situation in Côte d'Ivoire, of 29 December 2002

Introduction

During the night of 18-19 September 2002, Ivorians' dream of regaining calm and happiness after two years of tumult was brutally transformed into a nightmare. Unheard of and unprecedented violence had just burst into their history, violence that was all the more painful in that no hint had been apparent following the formation of one of the most consensual Governments ever known in Côte d'Ivoire.

Since that date war, with its train of misfortunes, has taken firm hold. In peacetime, human rights must be the subject of constant vigilance because of the passions of men who are often inclined to abuse their power or their strength. In wartime, even the most virtuous may find violence rising in them under the combined impact of the self-preservation instinct and of provocation and harassment of all kinds, particularly by biased media coverage.

Thus times of crisis must be times of surpassing of oneself and of courage in order to retain all the chances of emerging from them. It is to this rising above themselves that Ivorians and their Government have devoted their efforts since the outbreak of this war, with respect for human rights as the cornerstone.

Very early on, numerous measures were taken of which details were communicated to the Office of the High Commissioner for Human Rights. Côte d'Ivoire opened itself up to all national and international human rights organizations wishing to investigate the human rights situation.

Out of concern for transparency, on 5 November 2002 the Government of Côte d'Ivoire communicated to the Security Council a request for the sending of a commission of inquiry.

This request, which was made in a hostile international media environment (many disillusioned Ivorians even spoke of a labyrinthine international plot against Côte d'Ivoire), has to date not met with any response. This attitude contrasts with the promptness with which the United Nations responded to the request for the sending of a mission following an approach by a Government other than that of Côte d'Ivoire. A response to Côte d'Ivoire's request would have made it possible to prevent the lack of preparation which the mission itself acknowledges (see paras. 1, 2, 3 and 5 of the report). Despite everything, the Ivorian people expected a great deal from this mission.

Regrettably, the hope aroused by this new option was disappointed.

War is of itself a violation of human rights. Thus it is not the ideal setting for the exercise of these rights. However, the Government could not cover up the violations of human rights committed in the areas under its control. It decided,

whatever the cost, to take the road of truth. It notes with sorrow, however, that the fact-finding mission of the High Commissioner for Human Rights did not take this demanding road of truth.

A reading of the report shows the ambiguity in the nature of the mission (I). It also reveals a lack of rigour (II) and bias on the part of its drafters (III).

I. The ambiguities in the nature of the mission

On 5 November 2002 the Government of Côte d'Ivoire, through the Minister for Human Rights, requested the sending of a commission of inquiry into the violations of human rights in Côte d'Ivoire.

At his meeting with the Deputy High Commissioner for Human Rights at the headquarters of the Office of the High Commissioner for Human Rights in Geneva on Friday, 20 December 2002, the Minister for Human Rights reiterated this request. Instead, the Secretary-General requested the High Commissioner for Human Rights to send a mission to compile accurate information on the violations of human rights and international humanitarian law in Côte d'Ivoire. The mission was in Côte d'Ivoire from 23 to 29 December 2002.

It was described as a fact-finding mission.

Determining the facts presupposes assuming that they contain some truth. Implicit in doing so is the identification of certain responsibilities. According to paragraph 7 of the report, the mission's aim was not "... to point the finger of accusation at anyone". Thus "its aim was to gather information that might help the Security Council understand what was taking place on the ground and help in the search for peace". Well and good! But is it truly possible to establish the facts without pointing a finger of accusation? Can facts be established without inferring responsibilities? It is this ambiguity in the concept of a fact-finding mission which explains why, by way of describing the working method, the report presents, rather, elements of a methodology. It is again this ambiguity which makes it possible to understand, ultimately, how the mission managed to do what it claimed it wished to avoid. For example:

- In paragraph 13, after citing a decision by the Supreme Court of Côte d'Ivoire, it concludes that this decision had the consequence of excluding a large part of the Ivorian population. This conclusion is clearly a value judgement, whereas the mission's task was only to present the facts. Moreover, in what way can a decision by a court ruling on the eligibility of candidates for the Presidency of the Republic have the effect of excluding part of the population? We invite the mission to explain this reference to us;

- In paragraph 12, "citizenship, nationality and the right to be elected to high office became linked". What enables the mission to assert this by way of a conclusion? Do assertions of this kind form part of its objectives?

- The mission compiled a number of items of testimony.

However, it clearly ignored the hundreds of such items copied to it by the Minister for Human Rights both in Abidjan and in Geneva. One thing or the other: either the mission, which is fond of emphasizing that it is not a commission of

inquiry, does not compile testimony, or if it does, the most elementary justice requires it to take into account all the testimony available.

- In paragraph 57, the mission states that it "compiled information to the effect that the death squads are made up of elements close to the Government, the Presidential Guard and a tribal militia of the President's ethnic group", and even says that "Names were provided".

II. The lack of rigour

The lack of rigour is characterized by imprecision, shallow analysis of the facts and inaccuracy.

A. Imprecision

There are many cases of this, and they undermine the mission's credibility. They relate to the sources and to the facts.

1. Sources

A number of references are made to information provided by "human rights organizations" (paras. 84, 89 and 153), but these are not named, although Amnesty International is cited at length.

This approach gives rise to the following questions:

- Does the mission doubt the reliability of the facts, and serious ones, reported by these organizations?
- Is the mission suggesting that these organizations lack credibility, given their allegiance to certain political parties?
- Lastly, do these organizations really exist?
- These questions are all the more justified in that the Minister for Human Rights has listed more than 30 human rights organizations with which he is in straightforward cooperation.

2. Alleged facts

For example, in paragraph 51 reference is made to three migrants from Burkina Faso, Yabré Sebré, Masse Haïdou and Masse Ali, who are said to have been executed. However, no information is given on the circumstances in which they were killed. Were they MPCI combatants? Why was it these particular people who were killed; are nationals of Burkina Faso being systematically executed in Côte d'Ivoire? Was the mission influenced by the myth of anti-Burkina Faso feeling among Ivorians, as developed in a memorandum* which was broadly disseminated by the Government of Burkina Faso in diplomatic circles.

* The Government of Côte d'Ivoire has responded to this memorandum; copies of the response are available from the Minister for Human Rights and in Côte d'Ivoire's diplomatic missions.

B. Shallow analysis of the facts

Showing little rigour in analysing the information received, the mission contented itself with making gratuitous assertions and drawing hasty conclusions.

1. Many gratuitous assertions

The mission makes assertions without providing the slightest proof of them, or even the beginnings of proof.

Thus:

- In paragraphs 98 and 99, the mission refers to acts of hatred and xenophobia, acts committed against communities of the north by "certain sectors of the Ivorian population" and messages of incitement to ethnic hatred allegedly disseminated over national radio and television. All these facts are put forward without any example or any source being given;
- In paragraph 94, the mission categorically asserts that detention and torture centres exist in the areas controlled by the Government, and refers to gendarmerie and police barracks and schools as probable locations. Where does the mission get the idea that these are probable locations of detention and torture? The mission, which did not visit the sites to verify the facts, has failed in its duty to investigate;
- In paragraph 111, the mission reports that the militants of the Rassemblement des républicains and the Union démocratique et populaire de la Côte d'Ivoire* are said to have encountered threats to the exercise of their freedom of expression and opinion, and that a number of them are alleged to have been abducted and executed. No facts are reported in support of these statements;
- In paragraph 118, the mission indicates that it has received from human rights advocates information on cases of theft, violence and looting perpetrated by the security forces against the inhabitants of shantytowns. Although, as it maintains, the mission visited the areas, it did not take the trouble to compile, for the purpose of confirming the acts cited above, information from the inhabitants, whom it nevertheless says that it met in December 2002, about sites destroyed since 20 September 2002.

All of these facts that are listed should have been verified with the government authorities. By failing to do so, the mission was remiss in its obligation to analyse the facts. It was thus not able to evaluate the information received rigorously.

2. Lack of rigour in analysing the information received

In evaluating the information received, the mission disregarded the rule any investigator must follow — even though the mission claims that it was not a mission of inquiry, while nevertheless behaving as such — of hearing all those in possession of knowledge and taking account of their version of the facts in order, by hearing all parties, to verify the accuracy of the facts.

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* See the comments made below.

There are a number of examples that lend support to this idea:

- In paragraph 84, the mission reports the statements of a human rights organization which had estimated the number of people arrested by the government forces at 150. It did not verify this information with the government authorities before publishing it. Moreover, regarding the number of prisoners taken by the rebels, the mission states: "It is believed, however, that they had 11 members of the gendarmerie in detention". The term "believed" used here suggests that nothing was verified, and that the mission is not sure about what it is saying. It is known that after occupying towns, particularly Bouaké, the rebels took prisoner several dozen gendarmes and members of the police forces who were not in a belligerent situation, as well as members of their families;

- In paragraph 85, the mission was unable to confirm, as it was able to do in the case of Sergeant Alain Guei, that five people had, according to it, been detained in the Intelligence Service, yet this police unit is located in Abidjan, where the mission stayed. It also does not give the source of its information regarding these alleged detainees;

- In paragraph 87, the mission states that "since the arrival of the French troops, there have reportedly been no summary executions of gendarmes in Bouaké". This information is puzzling, for how are the French soldiers able to control the situation when they are known to be stationed at the various front lines and at the exit from the town of Bouaké to the eastern corridor, on the Bouaké M'Bahiakro road at the Baptist School, not inside the town of Bouaké, still less at the various rebel bases.

In addition, the report indicates that MPCI is holding prisoners, but gives no indication of their number. The mission should have insisted that the rebels allow them to visit these prisoners and assess the conditions of their detention;

- In paragraph 114, the mission states that some party representatives are said to have stressed the fact that "persons who have openly criticized the authorities have been murdered". This is the most apposite example of the lack of rigour in evaluating the information received by the mission, in that the term "persons" used in the report clearly indicates that there is no longer an opposition in Côte d'Ivoire.

However, there are many examples of free expression of opinion and thought in various forms, for example the daily appearance of newspapers whose editorial policies are sometimes diametrically opposed; this freedom of opinion extends as far as the resignation of government ministers — and yet they have not been murdered. Once again, the mission did not pursue its investigations further;

- In paragraph 122, the mission's use of the phrase "are said to have" leaves the reality of the acts committed by the two rebel movements in the west (MPIGO and MJB) in doubt, whereas it is well known that the combatants of these two movements systematically engage in looting, destruction of homes and massacres of the population. These facts are confirmed not only by displaced persons from this region, but also by national and even foreign radio and television stations;

- In paragraph 124, the mission states that it received information from the national armed forces of Côte d'Ivoire, provided by the deputy of Blolequin, who is said to have informed them of cases of looting and desecration of a cemetery in that district. Although the deputy of Blolequin was cited by the armed forces as the source of the information, the mission did not see fit to contact him to obtain more information;

- In paragraph 134, the mission states that "there has not been concrete information of persons charged or brought to justice, although the mission was assured at the highest level that cases were being processed". This shows that once again, no investigation was conducted in order to establish the facts. What the mission should have done was to visit the examining magistrate's offices in the Military Tribunal or the Courts of First Instance in Abidjan, as it did in Daloa, to verify that these cases were under way and ascertain the state of progress.

In addition, it should also have visited the various jails and correctional facilities in order to verify whether these persons were indeed being held there.

C. Inaccuracies

The report as a whole mentions various facts that are inaccurate. Examples of this are abundant; reference will be made here to a few which leave doubt as to how serious the mission was in its work.

For example:

- In paragraph 4, the mission states that it met with various members of the Government, including the Minister for Human Rights, represented by the Minister of Commerce. Apart from the ambiguity of the term "met with", which does not indicate whether it was a working meeting, the Government wishes to make the clarification that when the United Nations mission visited Abidjan Mr. Patrick Achi, Minister of Economic Infrastructures and Government Spokesman, was representing the Minister for Human Rights in her absence.

However, the Government of Côte d'Ivoire has two ministries of commerce:

- One, known as the Ministry of Domestic Commerce, headed by Madam Odette Sauyet Likikouet, Deputy for Diégonéfla and member of the Front Populaire Ivoirien (FPI);

- The other, known as the Ministry of Foreign Commerce, headed by Mr. Amadou Soumahoro, Mayor of Séguéla and member of the Rassemblement des Républicains (RDR).

Lastly, the Government points out that in the absence of the Minister for Human Rights, the principal private secretary in her office sought in vain to have a working meeting with the United Nations "fact-finding mission".

- In paragraph 55, the mission states that before he was murdered, Dr. Dacoury Tabley had been held for two days by the Ivorian security forces for questioning. Where did the mission obtain this information, which is inaccurate? Had it taken the trouble to read the annexes to file passed on to it

by the Minister for Human Rights, it would have known that as matters stand, it is not established that Dr. Dacoury Tabley was detained by the security forces. This does not emerge from report No. 942 of the investigations department of the Abidjan gendarmerie brigade dated 11 November 2002;

- In paragraph 27, the report notes that there are 60,000 refugees in the reception areas in the north of the country towards the frontier with Liberia. What northern area is it referring to? The inaccuracy of this statement is obvious, in that the frontier with Liberia is not in the north of Côte d'Ivoire, but in the south-west.

Moreover, the report suggests that Korhogo, which is the largest town in the north of the country, is not part of the northern region of Côte d'Ivoire, since it is stated that out of the total number of 72,000 refugees in Côte d'Ivoire, 60,000 are in the north of the country while 12,000 are said to be in Abidjan, Man, Bouaké and Korhogo. Lastly, can one conclude that, following the departure from Côte d'Ivoire of 32,000 Liberian refugees out of the total of 72,000, there are still 60,000 whom UNHCR would like to move to the south?

- In paragraph 111, the mission states that it met "representatives of political groups in Côte d'Ivoire, particularly the Union démocratique et populaire de la Côte d'Ivoire". It should be pointed out that the exact title of the party of the late general Robert Guei (to which the report no doubt refers) is the Union pour la démocratie et pour la paix en Côte d'Ivoire (UDPCI). In view of this error(?), it may legitimately be wondered whether the mission did indeed meet members of this party, especially as this error(?) occurs a number of times in the report (twice in paragraph 111 and twice in paragraph 112);

- In paragraph 133, the report appears to give the impression that the Ministry for Human Rights was established after the outbreak of the conflict. In fact, this ministry is a result of the ministerial reshuffling of 5 August 2002. Moreover, respect for human rights has always been a concern of the Government, which before 5 August 2002 had established a human rights department within the Ministry of Justice, Public Freedoms and Human Rights;

- In paragraph 137, it is reported that there has been no follow-up to the file on the Yopougon massacre in October 2000. This idea is inaccurate and without any foundation.

Following the report by the United Nations which designated gendarmes as the alleged perpetrators of these acts, judicial proceedings were initiated against the gendarmes in question and resulted in a trial following which they were acquitted because their guilt could not be established. It should be emphasized that the witnesses summoned to the trial, who could have enabled the court to come to a decision refused to appear. It is thus not proper to refer to impunity in this case. Moreover, the head of State has called for the file to be reopened. To this end, three new examining magistrates' offices (the eighth, ninth and tenth) have been opened at the seat of the Abidjan Court of First Instance.

- In paragraph 145, the report gives the impression that part of the Ivorian population does not enjoy protection and that discrimination exists based on the nationality of origin. This idea in no way reflects the reality, and is tendentious, in that all citizens in Côte d'Ivoire are equal before the law. This

principle is, moreover, affirmed by the Constitution in article 2, "All human beings are born free and equal before the law".

All of these inaccuracies are revealing as to the biased nature of this report.

III. Biased nature of the Mission

When the Minister for Human Rights passed through Geneva on 19 and 20 December, she was promised an impartial mission in accordance with United Nations rules. The inescapable truth, however, is that this promise was not borne out. The Mission's bias shows through in various points in the report.

A. Unsettling expressions and terms

- Paragraph 8 refers to "the Government and its supporters", with the MPCI on the other side. Does this mean that the conflict concerns only the Government and its supporters rather than all Ivorians whose country is being attacked?

The attack is on Côte d'Ivoire.

To speak of the Government and its supporters is to lend credence to the theory that an unlawful government and its implacable supporters are resisting the liberators of Côte d'Ivoire. Need we remind the mission that all political parties in Côte d'Ivoire have condemned the aggressor? Are those other parties government supporters?

- In paragraph 48, the term "mutiny" is used to speak of the rebellion. Can anyone seriously believe that what was triggered on 19 September 2002 was a mutiny?

Mutiny is the act of revolting. To mutiny is to collectively and openly refuse to submit to the orders of the authorities to which one is subjugated.

Is planning an executing the cold-blooded murder of a Minister of the Republic and other high-level civilian and military authorities a refusal to submit to their orders?

Is raping women in keeping with military discipline?

Are the deserters leading the rebellion members of the regular forces of Côte d'Ivoire?

Are the mercenaries of MPCI, MPIGO and MJP in Bouaké and the western part of the country members of the Ivorian Army?

To speak of mutiny here is thus to side with the cause of the conflict and, thereby to seek to make the violence against the Ivorians more palatable.

Wherever the rebellion by MPCI and its offshoots (MPIGO and MJP) is clearly to blame for a serious human rights violation, the mission employs a terse style and innocuous headings. This writing style rapidly achieves its purpose in a fast-paced cybersociety where readers do not always take the time to mull over sentences — or where, more often than not, they pay attention to headings only.

Thus, while the mission chooses the term "death squads" (a term which immediately strikes the reader) to describe an accusation levelled against the Government, it chooses to refer to the recruitment of child soldiers by the rebels as "the treatment of children".

Surely, the heading "child soldiers" would have been much more expressive.

B. Causes of the conflict

1. Causes of the conflict cited by the mission

The report of the mission of the Office of the High Commissioner for Human Rights identifies four issues as being at the root of the current crisis in Côte d'Ivoire.

The mission cites, in succession, the following questions:

- National identity;
- The concept of "ivoirité";
- Rural land ownership; and
- The Constitution.

A closer look at these causes shows that they cannot, on principle, be regarded as acceptable justification for the crisis, and also that there is no substantive basis for them.

With regard to the first three causes, the allegations concern the difficult conditions for acquiring Ivorian nationality by non-nationals and the denial to foreigners of full property rights over rural land. As the crisis is supposed to be inter-Ivorian, the question of foreigners cannot constitute valid and acceptable justification.

As for the Constitution, which the report terms exclusionary, particularly its article 35, it was voted on in a referendum called for by all the political parties without exception.

The Constitution is therefore not supposed to create Ivorians, whereas it itself is the expression of their will.

Calling this Constitution into question purely out of political speculation cannot be recognized as a source of the current conflict in Côte d'Ivoire.

The various causes cited had no place in the report without accepting that the conflict is actually of foreign origin.

Unfortunately, however, the mission has not explored this avenue, although it is no longer contested, given the means and logistics developed by the rebels, that the crisis also — and above all — has foreign origins, which should be condemned under international instruments.

Now that these preliminary remarks have been made, these causes should be examined in depth in order to establish that they could not constitute serious justification of this conflict.

(a) The issue of nationality

Defined as "belonging to the population making up a State", Ivorian nationality is governed by Act No. 61-415 of 14 December 1961, amended in 1972.

The grievance concerning the nationality code is that the conditions for eligibility have been too rigorous since 1972, when the possibility of acquiring Ivorian nationality by declaration, in accordance with the provisions of articles 17 to 23 of the code, was withdrawn.

Even under this legislation, when a declaration was made by a non-national, the Government of Côte d'Ivoire had the power to accept or reject that declaration in accordance with the aforementioned article 23.

This was the sovereign expression of the State in the choice of non-nationals wishing to acquire Ivorian nationality.

Indeed, the principle is that in "international law, questions of nationality are currently considered to be the exclusive domain of States. Each one freely determines the conditions for granting its nationality; no other entity can do that in its place".[1]

The exclusive competence of the State and its absolute freedom to choose its nationality requirements have been sanctioned by international case law, particularly by the Permanent Court of International Justice in its advisory opinion of 7 February 1923 (Series b,4), and by the International Court of Justice in the Nottebohm case of 6 April 1955.

Since the reform of 1972, Côte d'Ivoire has freely determined the unique and equal conditions for acquiring Ivorian nationality. And these conditions have never sparked resentment or been contested by non-nationals residing in Côte d'Ivoire.

It simply comes down to a politicization of the question of nationality, which cannot constitute a valid cause of the current crisis.

Paragraph 11, a series of disparate ideas without any logical sequence or thread, contains some dangerous conflations. The mission espouses theories fabricated by the authors of the rebellion to justify their actions.

This document tends to highlight the role of national identity in the current crisis in Côte d'Ivoire. In this connection, the authors of the report single out the 1972 Act establishing a nationality code as the root cause of the genuine frustration felt by migrant families.

The question might therefore arise as to why the 1972 Act did not begin to take effect until 15 years later. Is there no truth to the alternative hypothesis that certain political figures sought to increase their following by cleverly exploiting historical facts and by thrusting onto the political scene migrants who, from the start, never had any intention of exercising any citizens' rights whatsoever in Côte d'Ivoire?[2]

[1] Bernard Audit, "Droit International Privé", Economica 1991, p. 726.

[2] In this connection, a survey of communities of Burkina Faso nationals residing in Ghana might show striking similarities between their position and that of Burkina Faso nationals in Côte d'Ivoire.

(b) Concept of "ivoirité"

The mission touts this as one of the major causes of the crisis in Côte d'Ivoire.

The report, however, contains no definition of this supposedly controversial concept.

"Ivoirité" is a concept that does not exist in either Ivorian legislation or in the Government's current programme.

If we go by the definition given by its originator, President Henry Konan Bedie, "'ivoirité', regardless of ethnic background, religion, region and race, is a promise made to all, even to foreigners".

"'Ivoirité' as a distinctive culture of the Ivorians, of all Ivorians without exception, is the antithesis of tribalism, ethnocentrism and racism".[3]

Without endorsing these views, what can be deduced from statements made by the originator of the term is that "ivoirité" is in no way a means of exclusion which could explain the crisis.

Moreover, the Linas-Marcoussis Agreement of 24 January 2003 does not cite "ivoirité" as a cause of the conflict.

(c) Rural land ownership

It is an *idée reçue* that foreign nationals are at a disadvantage under the land reform system in Côte d'Ivoire. In order to weigh this allegation, pre-reform legislation and the evolution of the reform should be considered.

(1) Positive law before the reform

Before the reform, the land ownership regime was based principally on the following legislation:

- Decree of 26 July 1932 reorganizing the land ownership system,
- Decree No. 64 of 16 April 1964 prohibiting private contracts on real property,
- Act No. 70-209 of 20 March 1970 establishing the finance law for the 1970 initiatives, and
- Decree No. 71-74 of 16 February 1971 concerning procedures for State-owned land and property ownership.

The content of this positive law on rural land is characterized by article 2 of Decree No. 71-74 of 16 February 1971, which reads: "rights concerning soil use, known as customary rights, are intended only for those exercising them and may not be transferred on any ground whatsoever. Nowhere in the Republic may such rights be assigned to anyone".

Under article 1 of that decree, the occupation of rural land is subject to the obtention of a provisional or final title of transfer issued by the Ministry of Agriculture, or to authorization to occupy it on a temporary or revocable basis.

[3] Racines-Revue Culturelle Africaine No. 3, June 1998, p. 87.

These provisions have two results:

- The Government alone is authorized to issue a deed of occupation. Title to such land must be issued after the lease is finalized. The final procedure is set out in article 3 of the aforesaid decree and includes a request, a government survey, the granting of authorization to occupy followed by a temporary lease, registration in the State's name and a record of how it will be utilized.

Hence, no customary authority or village chief could grant ownership of rural land to another person even if that person was Ivorian.

The transfer of property and the main real property operations must be notarized. This requirement of legal proof is contained in article 5 of the decree of 16 February 1971 and the finance law of 20 March 1970.

Can it be proved, by citing names, that foreigners who have legal title to land or have legally been assigned property rights have been divested of their rights?

- The land on which the plantations in question have been cultivated is customary land, which is therefore not registered and rightfully belongs to the State. The only right the village authorities had over it was the right of use. As specified in article 2 of the decree of 16 February 1971, no one can be assigned such rights anywhere in the territory of the Republic.

Any sale of such land is therefore a sale *a non domino* (a sale by someone who does not own the property), since the land belongs to the State.

The case law of Ivorian courts on this subject has been consistent. Thus, the Court of Appeal of Abidjan, in a decision of 5 November 1976 (Revue ivoirienne de droit No. 1, 2, p. 50, No. 4) held that an agreement regarding a plantation should be annulled and that, in any case, whether the property is for sale or being put up as collateral, the plantation should be returned and the amount paid for it should be reimbursed.

The same Court of Appeal, in a decision of 24 February 1978 (Revue ivoirienne de droit, 1982, No. 1-2, p. 51, No. 91) held that, where village chiefs exercise a right of enjoyment over land, that land may not be transferred or leased without government approval and, failing such authorization, the lease between the parties becomes null and void.

The Adzopé section of the Court, in judgement No. 74/86 of 16 May 1986 decided that: "unregistered rural land belongs to the State and if there is no registration procedure, the occupants of such land exercise nothing more than a mere right of temporary use, enabling them to harvest their crops and reap the benefit of their labour".

Hence, under the legislation in place prior to the reform, neither an Ivorian nor a foreigner was permitted to acquire customary land. It can thus be said that, even during the term of President Félix Houphouët-Boigny, the rule that "land belongs to the one who tills it" was never an element of Ivorian positive law.

(2) The post-reform situation

The purpose of the reform initiated by Act No. 98-750 of 23 December 1998, unanimously adopted by the National Assembly before the coup d'état, was to

increase the coherence of a diffuse legislative system that was creating complications.

It defines rural land and determines what constitutes it. Rural land includes land belonging to the State, land owned by public authorities and private individuals, unowned and provisionally owned land, and customary and State-owned land leased by the State to public authorities and private individuals.

The reform does not waive registration as a prerequisite for gaining access to property. It innovates a procedure for proving customary rights, a controversial issue among Ivorians from similar customary backgrounds.

The courts have often experienced serious difficulties in settling questions of customary property.

Act No. 98-750 of 23 December 1998 also governs the transfer and handing down of rural land.

As before, the Government plays a central role in such transactions. Hence, under article 15, any contract granting land registered in the name of the State is transferred by the Government at the express request of an assignor and does not constitute a violation of third-party rights. It specifies that provisional leases may not be transferred and prohibits direct assignment of the contract by the lessee or the sublessee.

Apart from this exception, rural property owners may dispose of their land freely. Rural landowners may thus conclude contracts with foreigners or Ivorians within the limits of article 1, for example, by reserving undeveloped property exclusively for Ivorians, whether Ivorian by origin or by naturalization.

Actually, the new system of Ivorian land ownership protects foreign landholders in good faith. It affords them protection from unscrupulous nationals who illegally sold or leased them land which they did not own.

In fact, a comparative study of legislation in the ECOWAS countries, particularly that of Burkina Faso, reveals identical clauses on reserving rural, and even urban, property exclusively for nationals.

Thus, for all of the foregoing reasons, landowner legislation in Côte d'Ivoire blends into a kind of permanence. This permanence remains in harmony with both the Ivorian and the African soul, which holds that land should be inalienable because "it belongs to the ancestors and to the generations to come, as well as, and perhaps more so than, to those now living"(1). Accordingly, the great Western and African jurists believe that the idea that an individual can be a landowner goes against deep-seated African sentiment(2).[4]

This explains the land ownership problems that can arise among Ivorians, for example, between the Abouré and the M'Batto in Côte d'Ivoire. There has been a dispute between these two ethnic groups for several years.

[4] "Les grands systèmes de Droit Contemporains", René David and Camille Jauffret-Spinosi, Dalloz, 1992, p. 449. David and Jauffret-Spinosi, op. cit., 0. 451, M'Baye, "Droit et Développement en Afrique Francophone de l'Ouest", Volume (A) "les aspects juridiques du développement de l'Economie", 1966, p. 212-165.

(d) Constitution

The Ivorian Constitution, particularly its article 35, is criticized for being exclusionary.

For example, the Mission refers to a decision by the Constitutional Chamber of the Supreme Court rejecting the Presidential candidacy of 14 persons.

In reading this decision, which the mission seems not to have done, it becomes apparent that article 35 was not the sole ground for rejecting all the above-mentioned candidates. Most of these candidates were rejected for other reasons having to do with their failure to fulfil eligibility requirements.

Indeed, out of 19 declarations of candidacy, 12 were rejected and two withdrew.

Regarding the rejections:

- Allassane Ouattara was eliminated for:
  - difference in his mother's names on the certified true copy of her birth certificate;
  - questionable certificate of nationality;
  - dubious morality;
  - for having claimed another nationality.
- Henri Konan Bedie was eliminated for:
  - failure to have a medical examination.
- Boa Amoikon Tiemele Edjampan was eliminated for:
  - late payment of fee.
- Emile Constant Bombet was eliminated for:
  - dubious morality.
- Faustin Leka was eliminated for:
  - failure to pay fee.
- Gaston Ouassenan Kone was eliminated for:
  - late payment of fee.
- Lanzeni Coulibaly was eliminated for:
  - incomplete file.
- Coulibaly Climanlo was eliminated for:
  - failure to resign from the Civil Service.
- Lamine Fadiga was eliminated for:
  - morality.
- Dramane Toure was eliminated for:
  - incomplete file.
- Paul Pepe was eliminated for:
  - incomplete file.
- Bamba Morifere was eliminated for:
  - failure to resign from the Civil Service.

Furthermore, recommendation No. 8 in paragraph 154 says that "every effort should be made to bring about a national consensus on the national constitution, keeping in mind the provisions of international human rights law". What do they mean by "consensus" when an overwhelming majority of 86 per cent of the population participated in the vote on the Ivorian Constitution? All political parties, including the Rassemblement des Républicains (RDR), which is contesting it, called for a "yes" vote. The transparency of this referendum was never at issue.

Beyond that, exactly which international human rights norms is the Constitution supposed to take into account?

The mission remains silent on this question. To our knowledge, a model Constitution does not exist anywhere in the world. Each State has its Constitution.

In truth, this smacks of the rebels' and the mission's concern about the conditions for eligibility for the Presidency of the Republic. In this connection, each country establishes its criteria, and writes its Constitution according to its own circumstances:

Algeria

Article 73

To be eligible to seek the office of President of the Republic, candidates must:

- Be of Algerian nationality by origin,
- Be of the Muslim religion,
- Be at least 40 years old on the date of the election,
- Be in full possession of their civil and political rights,
- Prove that their spouse is of Algerian nationality,
- For candidates born before July 1942, provide proof of their participation in the Revolution of 1 November 1954, and
- For candidates born after July 1942, provide proof that their parents were not involved in acts hostile to the Revolution of 1 November 1954.

Benin

Article 44

Candidates for the office of President of the Republic must:

- Be of Beninese nationality from birth or for at least 10 years,
- Be of sound morality and great integrity,
- Be in possession of all their civil and political rights,
- Be at least 40 but not more than 70 years of age on the date the candidacy is filed,
- Reside in the territory of the Republic of Benin at the time of the elections,
- Enjoy a satisfactory state of physical and mental health, duly certified by a board of three doctors sworn and designated by the Constitutional Court.

Burkina Faso

Article 38

Candidates for the office of President of Burkina Faso must:

- Be born in Burkina Faso of parents who are themselves of Burkina Faso,
- Be at least 35 years of age by the date the candidacy is filed and meet the conditions required by law.

Gabon

Article 10

- All Gabonese of both sexes who possess their civil and political rights and are at least 40 and not more than 70 years of age are eligible to seek the office of President of the Republic.
- Any person having acquired Gabonese nationality may not be a candidate for President of the Republic. Only fourth-generation Gabonese, without interruption, are eligible to seek the Presidency.

Madagascar

Article 46

All candidates for the office of President of the Republic must:

- Be of Malagasy nationality;
- Be in possession of their civil and political rights;
- Be at least 40 years of age on the date the candidacy is filed.

An incumbent President of the Republic who wishes to be a candidate must resign on the eve of the electoral campaign.

Mali

Article 31

Candidates for the office of President of the Republic must:

- Be of native Malian nationality;
- Be in possession of all their civil and political rights.

Niger

Article 37

- Persons born in the Niger,
- Who are at least 40 years old and who possess civil and political rights are eligible for the Presidency of the Republic.

The law specifies the conditions of eligibility for the submission of candidatures.

Senegal

Article 28

Candidates for the office of President of the Republic must:

- Be exclusively of Senegalese nationality,
- Be in possession of their civil and political rights,
- Be at least 35 years of age.

Chad

Article 62

Chadians of either sex who meet the following conditions may put forward their candidacy for the office of President of the Republic:

- They must be of Chadian origin,
- They must be born of a father and mother of Chadian origin and have no nationality other than Chadian.

Tunisia

Article 40

Candidates for the office of President of the Republic must:

- Have no other nationality,
- Be of the Muslim religion,
- Have a Tunisian father, mother and paternal and maternal grandfathers of uninterrupted Tunisian nationality.
- Be at least 40 and not more than 70 years of age and enjoy all their civil and political rights.

Now that the content of these Constitutions has been set out, some remarks are in order:

It is a principle of international human rights law that differences do not constitute discrimination (European Court of Human Rights: Van Der Mussele case, judgment of 23 November 1983, Series A, Volume 70, para. 46).

Discrimination arises only when there is no objective and reasonable justification for distinguishing between individuals placed in analogous situations. The mission has not provided sufficient proof of this.

Moreover, according to case law (Rasmussen case, European Court of Human Rights, judgment of 28 November 1984, Series A, Volume 87, para. 40), one of the relevant factors in determining whether or not a difference in treatment is reasonable may be the existence of common ground between the laws of member States.

Thus, in the context of the above Constitutions, there is common ground among the laws of the States Members of the United Nations regarding conditions of eligibility for the Presidency. This common ground also extends to the Constitution

of Côte d'Ivoire, which cannot be called discriminatory without declaring all the other Constitutions discriminatory as well. Moreover, have such provisions in analogous Constitutions triggered wars in the other countries?

2. Forgotten or omitted causes

In paragraph 10, the Mission identifies what it considers to be human rights-related issues at the root of the conflict. However, on examination, it becomes clear that these issues are only indirectly related to human rights. The mission has forgotten about what might be called a real human rights issue at the root of the conflict:

(a) The financing of the rebellion

Today there is no longer anyone who seriously believes that the rebels financed their destabilizing action on their own.

- How can anyone imagine that soldiers supposedly being paid wages would be able to purchase weapons that a State like Côte d'Ivoire could not afford?
- Where is the money for the food, logistics and transport of these troops coming from?
- Who was kind enough to provide the satellite telephones the rebels are parading around with, and which even the best-paid Ivorian workers cannot afford?
- Where have they been obtaining the fuel for their vehicles for the past four months?
- When all is said and done, who is sponsoring the rebellion?

These have been gnawing questions since the outbreak of the Ivorian crisis. Why have the members of the United Nations mission, who were supposed to appear impartial and had the duty to investigate all the causes of the conflict, not found them disturbing?

The attempted coup d'état has been condemned by all organizations and countries!

How can the effects be condemned without investigating and condemning the cause, in this case, the financing?

Failure to do so is to doom the Ivorian conflict to continue.

The financing of a rebellion that sows crime in its wake can only be the work of organized crime. Could the United Nations mission have been unaware of this? Has it forgotten that General Assembly resolution 49/159 of 23 December 1994 stressed that organized crime is a serious threat to the development of States, the quality of life, and human rights and fundamental freedoms through the use of its financial power, and the violation and corruption of social, economic and political institutions?

Is there any weight to certain theories such as that of Yves Ekoue Amaïzo, who wrote in an article entitled "What is paralysing the Ivorian authorities?" in "Le Monde Diplomatique" in January 2003: "The competitiveness and transparency promoted by the International Monetary Fund (IMF) and the World Bank are hobbled by the capacity to influence, and sometimes, harm of certain private

financial oligarchies which no longer hesitate to hold Governments, both in the South and in the North, in a vice"?

Finally, why did the mission, which went to Bouaké, fail to question the rebels on their means of subsistence and the funding for their weapons?

(b) Outside interference

In the words of article 23 of the African Charter on Human and Peoples' Rights: "all peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States".

Paragraph 2 of that same article goes on to say: "For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: ... their territories shall not be used as bases for subversive or terrorist activities against the people of another State party to the present Charter".

In this connection, it is surprising that it did not occur to the United Nations mission to consider the question of outside interference as a human rights issue at the root of the conflict. And yet, international conventions deem such interference a human rights violation.

How could a United Nations mission whose stated aim was to "gather information that might help the Security Council understand what was taking place on the ground and help in the search for peace" fail to consider outside interference?

How could the Security Council understand the situation on the ground if the mission did not attempt to provide it information? On this very point, Mr. Dominique Galouzeau de Villepin, Minister for Foreign Affairs of France, a country with which Côte d'Ivoire has defence agreements, said on 16 December 2002 in the newspaper "La Croix": "We denounce outside intervention, that is, any action taken from neighbouring States of Côte d'Ivoire, the delivery of weapons, or dispatch of personnel. And we will draw all the appropriate conclusions in dealing with it".

How could the mission have closed its eyes to this question when, on 12 February 2003, Mr. Kansteiner, Assistant Secretary of State for African Affairs, told members of the Committee on International Relations of the House of Representatives of the United States Congress: "While both Presidents deny [the facts, we know that a number of rebels came in] from Burkina Faso. Their organization, the level of coordination and planning and the weaponry available to the rebels all suggest a pattern of outside assistance"?

Despite all the proof, the mission did not find this to be a human rights-related issue at the root of the conflict. Does it think that this will help to promote peace?

C. Biased presentation of the parties

1. Unequal coverage

In accordance with its tacit methodology, the mission gives the various parties the opportunity to present their side of the story. Once again, imbalances demonstrate its bias:

- From paragraph 68, which comes under a sub-section concerning mass graves, onwards, Mr. Guillaume Soro's comments account for nine (9) paragraphs (68, 69, 70, 71, 72, 73, 74, 75 and 77). The mission did not accord the Government that much attention: aside from the habitual exchange of courtesies, there was not even the opportunity for a genuine working meeting. One might think that the report serves as a forum for the MPCI. Of the 15 paragraphs (68 to 82) which supposedly deal with the Bouaké mass grave, only four relate to what might be regarded as the purpose of the mission, the remainder being devoted to the defence of MPCI.

With regard to detentions and arrests, the report cites the names of five persons who were allegedly detained at the Intelligence Service (paragraph 85). Paradoxically, when the report refers to persons detained by MPCI, it does not mention their names.

During her mission to Geneva on 19 and 20 December 2002, however, the Minister for Human Rights submitted, in the form of annexes to the Government's solemn declaration, items of testimony containing the names of soldiers and gendarmes detained by the rebels.

Another copy of that document, accompanied by a CD-ROM containing enlightening images of blatant human rights violations committed by the rebels, was submitted to the mission in Abidjan by the principal private secretary in the Office of the Minister for Human Rights. Why such biased treatment? The members of the mission did not ask the rebels any specific questions about the issue.

Furthermore, if the members of the mission had read the testimony, they would have known that Mamadou Cissé, assistant to the RDR Mayor of the rebel-held town of Vavoua, whose arrest they declare to be arbitrary, has been accused by B.T.A. (witness number 01 in the aforementioned document) of having offered arms to members of the Burkina Faso community to enable them to participate in the conflict.

2. Presentation of the rebels in a good light

Deceptive means are often employed to present the rebels in a good light.

- Paragraph 35 contains the following strange sentence: "Notwithstanding the efforts of the leadership of MPCI, there was pilfering". To which efforts does this refer? The summary execution of the alleged pilferers?[5]

[5] A dispatch from Agence France Press dated 7 October 2002 describes the execution of a thief. That dispatch concluded as follows: "at the rebel assembly point, a man carrying bags and a fan was escorted by a soldier. Suddenly, shots rang out: the man was executed in cold blood. 'He was a thief', said a prisoner, whose face was covered in shrapnel fragments."

How can the report speak of efforts to prevent pilfering when it refers to people who open the prisons wherever they go and enlist some of the inmates to fight alongside them?

We were under the impression that prison was a means of combating impunity. How can a mission from the Office of the United Nations High Commissioner for Human Rights, aware that the international community has chosen to fight against impunity, refer to efforts made by a group that rides roughshod over that principle? The mission seems to justify its position by indicating that MPCI acted in that manner because it lacks administrative capacity. So why did that group decide to start a war? Was any thought given to the victims of the crimes perpetrated by the newly freed prisoners?

- In paragraph 52, which deals with the murders of a Minister, Emile Boga Doudou, and Colonels Loula Dagrou, Oblé Dally and Yodé, the mission suggests that those crimes might not have been committed by MPCI and attributes that doubt to the Government, thereby suggesting that another lead might exist in the search for the murderers. Perhaps the mission is saying that the Government regards itself as responsible for those events. In truth, however, at the very beginning of the crisis the President of the Republic clearly pointed to the rebels as the perpetrators of those murders.

- The mission chose to report statements made by certain unnamed human rights organizations which all downplay the rebels' crimes. In paragraph 50, a certain organization claims to know the precise number of executions allegedly committed in Government-controlled areas, namely 150.

But when it comes to summary executions committed by the rebels, it suddenly becomes impossible to give a figure. Moreover, the report states that the rebels carried out the majority of those executions at the beginning of the conflict.

That is an insult to the memory of the countless victims killed long after the conflict began, whose relatives' testimony is contained in the file that was submitted to the Office of the High Commissioner for Human Rights in Geneva and to the mission upon its arrival in Abidjan.

- In paragraph 84, a human rights organization (the same one?) estimated at 150 the number of people arrested by government forces in September and December 2002. Once again, it is stated that the number of people arrested by the rebels is not known.

- Paragraph 121 of the report clearly states that no act of destruction of public or private buildings has been observed in Bouaké.

That statement is not impartial and also demonstrates the lack of commitment with which the work was carried out. In fact, acts of destruction of public and private property have certainly taken place in Bouaké.

With respect to public property:

- Police Headquarters was burned and its roof was removed by the rebels on the first day of the conflict.

- The doors of the court offices have been broken and the seals removed from them.

- The offices of the Prefect and the Deputy Prefect and all police stations and university campuses have been looted and ransacked.

With respect to private property, a number of private houses have been looted by the rebels and vehicles belonging to private individuals have been stolen.

Many items of testimony gathered by the Minister for Human Rights from displaced persons in Bouaké confirm these facts. The clearest example is that of a businessman from Bouaké, Konan N'zi Kan Kouame, who had his home looted and over seventy (70) goods vans damaged.

- Paragraph 125 of the mission report states: "Since the arrival of the French forces at Bouaké, it has been observed that the MPCI combatants are making efforts to avoid acts of looting".

The above comments on paragraph 87 also apply in this case.

Furthermore, through its use of the phrase "it has been observed", the mission gives the impression that it witnessed at first hand the supposed efforts made by MPCI to avoid acts of looting, whereas in actual fact it spent only one day in Bouaké, in December 2002.

3. Presentation of the Government in a bad light

In general, when the mission relays the Government's explanations, it endeavours to state that it has no view as to their truthfulness (paragraph 64), as if to cast a veil of suspicion over the Ivorian authorities.

(a) Mass graves

- In paragraph 60, the mission describes the Monoko-Zohi mass grave, specifying that the area, which is under rebel control, is located in the western part of the country.

The mission draws no conclusions from the geographical location of the mass grave. Moreover, it does not refer to the comments made in the report and contained in the files which were submitted to it by the Minister for Human Rights in Abidjan and Geneva. The mission would certainly have been compelled to admit that, to reach Monoko-Zohi (Dania sub-prefecture) it was necessary to pass through Zaïbo, where the French forces are stationed. Could the French forces say whether they saw the Ivorian forces passing by? The mission was perfectly entitled to ask them. The purpose of the mission was to establish those facts.

(b) Allegations of abuse and threats

- Paragraph 66 of the report states: "The mission asked the Government military leaders whether anyone had been brought to justice because of excesses". The term "alleged" is absent at this point. Does the mission believe that the Government forces were guilty of excesses?

Which particular excess was the mission referring to when it made such an absolute condemnation, which fails to respect the presumption of innocence? Is the mission intimating that the Ivorian authorities are fostering impunity?

Moreover, it is doubtful that a government military leader would have provided such categorical information ex officio. Is employing the term "military

leader" without identifying that leader merely an attempt to give credit to testimony whose meaning is ambiguous?

- Paragraphs 107 and 108 describe the violence, pressure and death threats to which journalists in Côte d'Ivoire, particularly those close to the opposition parties, have been subjected and imply that those acts are being committed by the Ivorian security forces. However, the mission has been unable to prove that that was the case.

Furthermore, assuming that those acts were indeed committed by the Ivorian security forces, i.e. by government agents, how should we interpret the fact that, as the report rightly states, they also targeted two newspapers close to the ruling party (*Notre Voie* and *L'Actuel*)?

In addition, as "Reporters without Borders" did several months ago, the mission has bizarrely omitted to mention that, on 19 September, 29 September and 5 October 2002, the Ivorian television broadcasting centre in Abobo, Abidjan, was attacked and vandalized. Likewise, the broadcasting centres in Séguéla and Namgbo (located in the north of the country) and in Bouaké have also been attacked. At present, therefore, national radio and television are no longer broadcasting in rebel-controlled areas and the rebels are using what remains of the broadcasting centres to disseminate their messages and propaganda.

Are those omissions attributable to the fact that it is unthinkable to blame such acts of sabotage on the Government?

- Paragraph 112 of the report states that political assassinations have occurred since the beginning of the crisis and cites, inter alia, the death of General Robert Gueï as a typical example. It should be pointed out that, since the circumstances surrounding his death are still not clear, it is unwise to assert that he was the victim of a political assassination.

(c) Destruction of shantytowns

The bias in the examination of the facts is also apparent in the tendentious and falsely compassionate interpretation of the destruction of the shantytowns.

It is true that shantytowns have been destroyed. It is also true that as part of a policy aiming at sustainable urban development the inhabitants of such areas were scheduled to be displaced and the settlements destroyed. But the process was moved forward for security reasons.

The mission takes the liberty of passing the following judgement on the Ivorian authorities: "This issue gives rise to great problems of conscience. It is hard to justify the deliberate destruction of buildings where human beings make their homes and live."

Those who condemn Côte d'Ivoire's treatment of that issue do not have a monopoly on emotions and compassion.

Does the mission wish to dispute the fact that those who attacked Côte d'Ivoire were from certain shantytowns? The destruction of those shantytowns was a matter of necessity. The mission should be asked the following question: which is more important, human life or material property? Ivorians believe that life is worth more than property.

Our accusers did not feel the same indignation when presented with the file containing accounts of the anguish of raped women and murder victims' relatives. Were they indignant at the fate of those who were driven from Bouaké?

The real problems lie in the lack of forewarning and issues relating to relocation. The Government has expressed its sympathy for the inhabitants of the shantytowns and several ministers have visited them. A relocation policy is envisaged and has been drawn up. Many of the inhabitants have been housed in Government-owned centres. So where is the lack of conscience?

Once again, our accusers do not have a monopoly on emotions. They would do better to concern themselves with ensuring that those inhabitants have sufficient resources to leave the shantytowns and reside in homes as luxurious as their own.

It is not a question of taking action to ensure that those people remain in the shantytowns. The Government was working on that policy when war broke out. Therefore, if our accusers could convince the rebels to lay down their arms, the shantytown problem would be solved once and for all.

(d) Major omissions

- In paragraphs 22 and 23, the mission points out that there is a substantial flow of internally displaced persons. However, it fails to mention the direction in which those displacements are taking place, i.e. from north to south.

We consider that information to be essential.

(e) The media

The report attempts, in an insidious fashion, to show that the President of the Republic acknowledges that these newspapers in question are inciting hatred. Where is the evidence to prove that the President's call for an end to attacks on foreigners was aimed at newspapers, in particular *Notre Voie*, *Le National* and *Fraternité Matin*?

At this stage of the proceedings, it is appropriate to make a number of remarks about the accusations levelled at the daily newspaper *Le National*, namely that it made racist comments against the Muslim community and homosexuals.

The mission gives the impression, shared by many Ivorians, that the human rights argument is an essential part of the war that has been imposed on Côte d'Ivoire and that the International Criminal Court is a fundamental mechanism to be used in that connection.

Le National, presented by the mission as a tribalistic, xenophobic and racist daily newspaper, is, along with several other newspapers, regarded as the mouthpiece of the ruling party. All accusations levelled at that newspaper are therefore also accusations levelled at the Government's party.

The mission insinuates that the newspaper espouses the ideology of the extreme-right. However, the distinguishing characteristic of the extreme-right, whose narrow-minded nationalism is certainly not desirable, is its discriminatory practices: it advocates the exclusion, and even the destruction, of so-called marginalized individuals, such as homosexuals. For that reason, a case against *Le*

National and certain members of the Ivorian Government who are regarded as its spokespersons should be brought before the International Criminal Court.

The report's assertion that *Le National* is known for its radical positions and xenophobic articles is expanded upon as follows: "This newspaper is a conduit for racist comments against the Muslim community and homosexuals". The superficiality of that remark can be illustrated by the fact that the editorial column of *Le National* has never included action to combat homosexuality, a phenomenon that is relatively unknown in Côte d'Ivoire (in comparison to Europe and America).

D. The report's revelations

- In paragraph 145 *in fine*, the report says of Côte d'Ivoire, "It is a spectacular case of a prosperous country with legendary hospitality that now had to grapple with the immigrant sector of its population and their descendants, and with the political repercussions of their sympathies."

The report tells us that immigrants in Côte d'Ivoire have political sympathies. What are these sympathies? Perhaps the mission should tell us. Is it insinuating that foreigners have become involved in politics in Côte d'Ivoire? Which political grouping has their involvement helped?

The mission appears to be saying that the war was waged for foreigners and certainly by some of those foreigners.

E. Those responsible for the "death squads"

1. Violation of the presumption of innocence

- From paragraph 55 onwards, mention is made of murders organized by death squads and private militias.

The Government notes that crimes have been committed in the free areas.

In a televised statement on 8 November 2002, through its Minister for Human Rights, the Government condemned the crimes and expressed its condolences to the bereaved families. On the same day, it held a working meeting with the Chief of General Staff, the Commander-in-Chief of the Gendarmerie and the Director-General of the National Police, together with their close collaborators, with a view to strengthening security and encouraging the security and defence forces to seek out and prosecute the perpetrators of those crimes. In the same statement, the Government said that the personal convictions of its members could not allow them to accept such crimes and again invited the international community to send a commission of inquiry to Côte d'Ivoire.

According to the report, "The mission compiled information to the effect that the death squads are made up of elements close to the Government [...] and a tribal militia of the President's ethnic group. Names were provided."

Despite the attempt to conceal them in the midst of allegations of a general nature, the serious nature of these references cannot be ignored.

There is no other way to interpret these remarks: the United Nations mission is attributing responsibility for the crimes committed by the "death squads" to the Government and President of the Republic of Côte d'Ivoire.

This conclusion is supported by the following:

- First, the reader should not be deceived by the use of the conditional in the French text [*serait*]. In any event, that grammatical form presents what is being said as an eventuality. The mission speaks of "information" compiled. It does not give the source, unlike in other parts of the report where it cites human rights organizations, political parties and rebels.
- In paragraph 59, however it says that the national armed forces of Côte d'Ivoire stated that the MCPI had drawn up blacklists of people to be executed, giving the impression that it is endorsing this piece of information and that it gives it more credit than the others. Here it does not provide its famous set clause: "In citing these parts of the paper, the mission does not take a position with regard to them (paragraph 41)."

Concerning responsibility for the death squads, despite the seriousness of the "information" it does not take the basic precaution of making the same reservation. This might be translated as: take everything the Government says with reservations but when the Government itself is in question, presume that it is true.

Furthermore, the term "*précisant*" [in the French text] after "*information*" reveals the intentions of the report's authors. Precision presumes there is certainty. It supposes that whatever is at issue exists. It is therefore not surprising that the United Nations mission is in possession of names. The mission, so anxious to combat impunity, does not take the trouble to transmit those names to the authorities to enable them to prosecute the criminals in question.

The mission is aware that proceedings have been brought against persons unknown, as attested by investigations department report No. 942 of 11 November 2002, which was included in the file transmitted to the Deputy High Commissioner in Geneva, on 20 December 2002, by the Minister for Human Rights.

Is it concerned with combating impunity or politically exploiting allegations by presenting them as information?

In reality, the only identifiable person, and therefore the perfect culprit, is the President of the Republic, not only as head of Government but also as a person belonging to an ethnic group that produced a tribal militia.

This is an insidious but undeniable violation of the presumption of innocence, all the more unacceptable because it comes from a body that is supposed to protect it. This principle is universally recognized and confirmed by article 9 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.

The presumption of innocence is acknowledged to be applicable even at the preliminary stage of criminal proceedings. The jurisdictional bodies of the European Court of Human Rights have always upheld this principle in their case law.

For example, paragraphs 35 et seq. of the judgement of the European Court of Human Rights of 10 February 1995 in the Allenet de Ribemont case state the following: "*the scope of article 6 (2) is not limited to the eventuality mentioned by*

the Government. The Court held that there had been violations of this provision in the Minelli and Sekanina cases [...] although the national courts concerned had closed the proceedings in the first of those cases because the limitation period had expired and had acquitted the applicant in the second." It even found that it was applicable in other cases where the national courts had not had to make findings on guilt or innocence.[6]

Therefore, even at the pre-trial stage, the presumption of innocence must be respected.

The use of the conditional does not exclude the existence of a definite violation of the presumption of innocence. In the case x...v. Austria, the European Commission on Human Rights stated so in the following terms: "taken separately, the words 'according to the findings of the inquiry the baby was, in all probability, killed by his grandmother, aged 68 [*aurait selon toute probabilité, été tué*] are close to an affirmation of the petitioner's guilt, and thus are open to criticism. A more neutral formula could have met the need to inform the public."

The United Nations mission could not argue that it had merely reproduced suspicions since, here again, as stated by J. A. Frowein in a commentary to the case Petra Kruise v. Switzerland and also by the European Commission on Human Rights:[7] "*... an expression of suspicion may have an influence at the trial stage, if such expression has the effect of unleashing a press campaign or influencing the judges.*"[8]

In this case the United Nations report did indeed unleash a press campaign premonitions of which can be seen in the interview with the President of Burkina Faso. The daily newspapers "La Croix" and "Le Monde" chose their guilty party on the basis of the report.

The report also seeks, implicitly, to justify judicial proceedings and influence the judges who will be hearing the cases, as the High Commissioner for Human Rights has continually been stating that those responsible for the abuses will be prosecuted in the International Criminal Court.

All things considered, there has clearly been a violation of the presumption of innocence in this case.

In reality, this accusation is one more piece of evidence of the international campaign against Côte d'Ivoire, which seeks to legitimize the taking of power by force of arms by presenting the victims as the executioners.

Regrettably, the International Criminal Court, the repository of so many hopes, can be regarded as a weapon of war on the same basis as tanks and Kalashnikov rifles, serving an uprising that is being funded by persons as yet unknown.

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[6] European Court of Human Rights, Adolf judgement of 26 March 1982; Lutz, Englert and Nölkenbockhoff judgements of 25 August 1987.

[7] Petition No. 9077/80, decision of 6 October 1981; D.R., 26; pp. 213-214. Petition No. 7986/77, decision of 3 October 1978.

[8] Cited by Dean Spielman, "Procès équitable et présomption d'innocence", Revue Trimestrielle des Droits de l'Homme, 1999, p. 669.

2. A few remarks about the charges levelled against the Government

Despite the absence of proof supporting the allegations concerning the death squads, a few remarks are called for concerning the charges levelled against the President of the Republic and the Government.

(a) Lack of motive

Unless a person's mental faculties are impaired, there is no crime without a motive. The motive is the reason that has caused an individual to commit an offence.

What would be the motives of the Government of Côte d'Ivoire for committing such crimes? Threats, revenge, jealousy?

A brief consideration of the personality of those killed reveals how pointless these charges are:

- Emile Tehe, chairman of the Mouvement Populaire Ivoirien, murdered in a cowardly attack on 2 November 2002, was in no way a danger to the Government. Many Ivorians had never really heard of him until he was killed.
- Rady Philippe Mohamed, an economic operator, was hardly a problem for the Government. The head of the Ivorian State is not a businessman and has continually told the business community that he is not competing with it. What would be the point of killing this prosperous tradesman?
- Dr. Benoît Dacoury-Tabley, whose detention for two days by the Ivorian security forces, has not been backed up by evidence, was not a threat to the Government.

Did he possess weapons, was he a military strategist? No evidence has been provided which would explain why he specifically, and no other members of his family, should be targeted. The members of the Dacoury-Tabley family are so well aware of this that they issued a statement, read out by Philippe Henri Dacoury-Tabley, to the effect that the real perpetrators of their brother's death were those who have declared this war.

- Are Yêrêfê Camara, Souleymane Coulibaly and Diomandé Soualiho a danger to the Government? If so, in what way?

For all these crimes, is it admissible to attribute the motive of revenge to the highest-ranking Ivorian authorities?

If they are considered to be planning revenge in acting this way, it must be concluded that all those suspected of involvement in the rebellion as either perpetrators or participants would be systematically executed. In that case, how can it be explained that proceedings have been opened in courts of investigation against persons suspected of being members of the rebellion and having participated in attacks against State security?

Since 14 October 2002, against the background of the war currently taking place:

- Twenty-three persons have been indicted in the Eighth Examining Magistrate's Office, Court of Abidjan, on charges of undermining State authority, participation in an armed group and conspiracy.

- Twenty-five persons have been indicted in the Tenth Examining Magistrate's Office. The United Nations mission has been given a list containing the names of all these persons.

Why would a State that summarily and secretly executes its opponents continue to organize judicial proceedings against them?

Why would such a Government choose to be civilized towards some and brutal towards others?

(b) Who stands to benefit from the crimes?

A sensible Government, even the most Machiavellian, does not act in a way that is of no benefit to it. In this conflict, the Government of Côte d'Ivoire has opted for peace and has made many sacrifices in order to sit down at the same table as the rebels who, it will be recalled, were solemnly condemned by the United Nations Security Council on 31 October 2002. Its conduct is dictated by the choice it has made: clearly, such crimes are of no benefit to it.

It will be noted that, each time the situation is favourable to peace or to the Government in power, a crime involving public figures or their relatives occurs:

- The death of Dr. Benoît Dacoury-Tabley occurred on 8 November 2002, following the signing, at Lomé, Togo, of an agreement between the rebels and the Government establishing respect for constitutional legality, institutions and territorial integrity and before the signing of a second agreement on modalities for disarming the rebels which was to bring the war to an end.

What more could a legitimate government hope for even if it is thought to be solely concerned with staying in power?

Can it reasonably be thought that the Government could sponsor the murder of the brother of one of the rebel chiefs at that point in time?

It may be concluded that this crime is of benefit to everyone but the Ivorian authorities.

Moreover, the rebels took that opportunity to suspend negotiations.

In its communiqué, which was, curiously, ignored by the international press, the Dacoury-Tabley family stated that it did not wish the death of its son to be exploited for political purposes and used as a pretext to stop the negotiations.

- The death of actor Yêrêfê Camara, known as "H", occurred on 2 February 2003, following a historic demonstration of support for the Government which brought together millions of people, including several foreigners, in particular Europeans, Lebanese and members of West African population groups.

For the first time, the international media were obliged to recognize the immense and impressive support that existed for the Government and the President of the Republic.

The agenda of hatred being propagated against Côte d'Ivoire had been dealt a blow. Can it be said that, at that specific point in time, it would be of any benefit to the Government to sponsor the murder of "H", a famous actor, knowing that that could tarnish its image abroad?

Even the most unintelligent dictatorship would not do so.

This crime was perpetrated in an effort to make people forget the huge demonstration of popular support for the regime which had just taken place.

Hence it can be of no benefit to anyone but the enemies of the current Government.

In view of the foregoing, numerous Ivorians fear that, following the reservations entered to the Linas-Marcoussis Agreement by the American Congress, the death squads will strike again, in order to discredit the Ivorian regime and distract the international community's attention from condemning attempts to take power by force of arms.

- If the Government is behind these crimes, how can it be explained that trade-union leader Mahan Gahe, a fervent defender of constitutional legality whose work is favourable to the current regime, escaped an attempt on his life on the night of Tuesday 11 to Wednesday 12 February 2003. Individuals in military uniform and bearing weapons burst into his home at Anyama. He owes his life to his home alarm system, which drove the killers off.

(c) Some compelling facts

The Ivorian Government has been the subject of continual criticism. If it is behind the death squads, it has to be acknowledged that, unless it is thought to be completely lacking in intelligence, it is a very poor criminal indeed.

The death squads we have observed in recent history have in general been characterized by their discretion, which is an essential requirement for them to be effective. The circumstances of these crimes raise questions:

- The body of Dr. Dacoury-Tabley was found in a crowded area, as was the body of Emile Tehe, which was found on the northern highway.
- The body of Yéréfé Camara, known as "H", was found by RDR activists at 5 a.m. in a working-class neighbourhood where many RDR activists are said to live.

In the light of these circumstances, the impression clearly emerges that these crimes were committed in order that the bodies would be seen by as many people as possible. In other words, publicity seems to be part of the killers' strategy, if not their very goal.

A Government with any intelligence whatsoever would not display its victims in this way, knowing that this could be to its disadvantage.

Conclusion

In his observations concerning a previous United Nations commission of inquiry into the events of October and December 2000 in Côte d'Ivoire, Professor René Degni-Segui[9] concluded as follows : "ultimately, the Commission's biased and Manichaean approach leads it, not to seek the truth, the purpose of this inquiry, but rather to defend a cause, that of a political party. Hence it raises more problems than

[9] Former United Nations Special Rapporteur for Rwanda.

it resolves. Rather than helping us forward, the Commission's report is a step backwards in the process of unearthing the truth because of its incomplete and biased nature."

This conclusion remains perfectly relevant with regard to the fact-finding report of the mission that has just visited Côte d'Ivoire. Côte d'Ivoire notes with regret that the mission has, with this report, sanctioned the argument of force as a fait accompli, to the detriment of the requirements of democracy and human rights.

It is to be feared that the representatives of the United Nations, in continuing to pursue this approach, will quite simply cause people gradually to reject the Organization, which would be a disaster for humanity.

The mission has noted that numerous Ivorians have faith in the United Nations.

In view of the foregoing, when the commission of inquiry that our country has long been demanding finally comes, will it find faith in Côte d'Ivoire?

Done at Abidjan, 17 February 2003

For the Government of the Republic of Côte d'Ivoire

Victorine Wodié
Minister for Human Rights

Appendix

The report of the United Nations emergency human rights mission contains two enormous untruths, in paragraph 13:

• First untruth:

Mention is made of the new Constitution adopted in 2002. In fact the new Constitution of Côte d'Ivoire was adopted by referendum on 23 July 2000 and promulgated on 1 August 2000. It is entitled:

Act No. 2000-513 establishing the Constitution of the Republic of Côte d'Ivoire

• Second untruth:

The United Nations report indicates that the latest presidential elections, which brought President Gbagbo to power, were held in 2002, with all the insinuations inherent in that date.

It should be strongly emphasized that the recent presidential elections were organized by the military junta headed by General Robert Guei, in 2000 and not 2002. During those elections, M. Laurent Gbagbo, who was not a member of the government, was an opposition candidate, on the same basis as the candidates of the other opposition parties. Thus he could not logically be subject to the constraints of constitutional law while at the same time manipulating it in order to exclude other candidates.